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December 7, 2010

BY HAND DELIVERY

CONFIDENTIAL SUBMISSION

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Struct, NW
Washington, DC 20468

•

Re: MUR 6401 and MUR 6432

Response of TransCanada Keystone Pipeline GP, LLC

Dear Mr. Jordan:

This response is submitted by undersigned counsel on behalf of TransCanada Keystone Pipeline GP, LLC ("Keystona") in reply to complaints filed by the Nebraska Democratic Party (MUR 6401) and Bold Nebraska (MUR 6432). As more fully detailed below, TransCanada requests that the Commission find no reason to believe that a violation of the Federal Election Campaign Act ("FECA") occurred in these matters, and dismiss the Complaint accordingly. Because of the nature of certain company proprietary Information contained in this submission, Keystone also requests that this submission remain confidential pursuant to 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), and 11 C.F.R. §§ 4.5(a) and 111.21.

The complaint filed by Nebraska Dumerulic Party essents that the Ruysbane much a sehiribution to the Governor Muliceman Committee in violation of 2 U.S.C. §441e. The exceptaint questions why the address was on the contributions report filed by the Governor Heineman Committee is not the Canadian Report filed by the Address of the Canadian corporate headquarters of TransCanada Einergy, Ltd." Similarly, the complaint filed by Rold Nebraska assects that TransCanada Corporation made contributions to the Governor Heineman Committee and the Bruning for Attorney General campaign in violation of 2 U.S.C. §441e.

As more fully detailed below, while the issue of the reported entity or address of the contributor may have resulted in some uncertainty as to the permissibility of the contributions, at no time was a foreign national involved in the making of these contributions, and the assertions with respect to the source of the contributions or intimation of involvement of a foreign national in the direction or caritrol deline contributions are incorrect.

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Further, despite the contributions being made by a US entity, from US funds, and under the direction and control of US citizans, we and waiting that the equivalent relating to entity identification and addross last the Governor Heineman Committee and Bruning for Attorney Gazzeral campaigns in fully refund the contributions in quastion on September 30, 2010, page to the filing on October 16, 2010 and October 19, 2010¹ respectively of the instant complaints.

Cverview of Keystone

TransCancida Keystome Pipeline GP, LP is a US entity incorporated in Delaware with its principal place of business located at 717 Texas St, Suite 2400, Houston, Texas, and with operations at 13710 FNB Parkway, Ofraina, Nebratika. Rejuditions operates as a subsidiary of TransCanada Pipeline USA, Lad, also a hiS corporation registrates in Delaware. Both entities are whelly covered by TransCanada Corporation. An organizational chart is enclosed at Exhibit A.

As the Commission is aware from its approval of Advisory Opinion 2008-15, TransCanada operates through multiple US subsidiaries. TransCanada has developed a set of internal practices and policies to ensure that its political activities in the US fully comply with FECA and Commission regulations. As with other political contributions made by US subsidiaries of TransCanada, the contribution to the Governor Heinerman Committee was directed and controlled by US different using US delivers from bank accounts in the US that are under the centrol of Keystone.

Contribution Summery

On December 11, 2009, Beth Jensen, Director of Government Relations for Keystone and a US citizen, approved and directed disbursement of contributions in the amount of \$2,500 each to the Governor Heineman Committee and the Bruning for Attorney General campaigns. This approval was given only after Ms. Jensen reviewed both the permissibility of the contribution under Nebraska law and attendant reporting obligations with outside counsel.

By e-mail detail Department 11, 2009, enclosed as Exhibit B, Ms. James instructed that TransCaranda Accounts Payable staff process the request and learn checks from Knystone operating funds to the Heinardan and Burning comparigns. Assetute Payable staff, located in Calgary, processed the request as directed, and on December 22, 2009, checks payable from "TransCanada Keystone Pipeline, LP" were issued on a Keystone US funds Citibank account. As directed, Accounts Payable sent the checks to Ma. Jensen. The Accounts Payable canter does not authorize payments, but is only permitted to process those payments duly authorized by operating units of TransCanada — in this case, Keystone. Upon receipt of the checks from Accounts Payable, Ms. Jensen forwarded the contribution checks to Kissel E&S Associates, also located in Omaha, Nebraska, an outside consulting firm engaged by Keystone for government relations efforts. The consulting firm then delivered the checks by hand to the usualizate committees. A copy of the checks to the Helmentin and Bruning compaign committees are engineed as Exhibit C.

Two issues arose with respect to the reporting of these contributions.

¹ Bold Nebraska initially filed its complaint on October 19, 2010, but the complaint was technically deficient. It was refiled on November 5, 2010.

First, as directed by Ms. Jensen and as noted on the contribution checks, the contributor is identified as hieystens. The address listed on the checks, however, is mutitle Create, Metastan business of Keyntons, but without the address of the Calgary Associates Physike center that prepared the checks at Ms. Jensen's instruction. Continue to the assertions made in the complaints, this address in no way denotes that the checks originated from a foreign source, but identifies only the location of the Accounts Payable center. The checks plainly identify the US bank on which the funds were drawn, and clearly state "US Funds" on the face of the checks. As directed by Ms. Jensen, and consistent with Commission guidance to YransCanada in AO 2005-15, the contribution was made from US state denominated operating funds of Keystons located in a US firemodal institution.

Second, is reporting these contributions on January 20, 2010 to the Mehittleke Assumption and Disclosure Commission ("NADC"), Keystone personnel incorrectly Identified "TransCanada Corporation" as the named contributor, rather than Keystone. However, the Form 8-7 filing properly disclosed the Omaha, Nebraeka operating address for Keystone. A copy of the NADG Form 8-7 as filed is exclosed as Exhibit D, and a copy of an amended filing is included as Exhibit E.

Neither of these issues after the essential character of the contributions as ones directed by US persons, drawn on US themcial institutions, and using US funds of Keystene.

It is carr understanding that a sureword contains for named by the Hallmannay sure Bouring comparing committees as a sensit of an impury from the MADC is September 2010 identified uncertainty regarding the source of the contribution on the checks. Despite receiving clarifying information from Keystone, out of an abundance of caution the two candidate cammittees refunded the contributions to Keystone on September 29, 2010, and a copy of the refund checks are enclosed as Exhibit F.

Legal Framework

PECA and Committed on regulations prohibit foreign nationals from making, directly or indirectly, contributions or expenditures in connection with federal, state, or local elections. 2 U.S.C.§ 441e. This includes any foreign national participation in the decision-making process or control of the political contribution activities of domestic subsidiary corporations. 11 C.F.R.§ 110.20(i). See also Advisory Opinions 2000-17 (Edentificate), 1995-15 (Addition Engine PAC), 2906-15 (TransCaracter). The province of this partification is to prevent title corruption and include influence of the US political process by individuals and entities not under the jurisdiation and control of the laws of the United States.

Compliance with this framework has been a central aspect of TransCanada's US operations, and is an obligation taken seriously by TransCanada's US subsidiaries, including Keystone. Indeed, TransCanada's US subsidiaries, including Keystone. Indeed, TransCanada, through counsel, requested and received an Advisory Opinion (AO 2008-19) from the Computation with respirate to its proposed intermal controls estated to political activities by its US subsidiaries. The AO request was on behalf of TransCanada and two of its US subsidiaries, Gas Transmission Northwest Computation ("GTN") and TransCanada and two of its US subsidiaries, Gas detailed above, and equation with guidance estated from the Charatination, the constribution at issue in these matters were not enoted by a foreign entity, not did any famign individual or entity direct, control, or participate in the dentaion making process magnifical the scaling of the contributions by Kayatane.

Under existing Commission precedent, providing administrative support that is de minimis does not result in familiation of a political contribution. 2 U.S.C. § 441b(b)(2)(C), see also Arthrefory Opinime 1979-27 (Committee for Thorough Agricultural Political Education) and 1979-42 (Bouth Carolina National MS. Bank PAC). In the centent of pelitical action corrections, the Commission has permitted the foreign entity to provide administrative support to the subsidiary's PAC without running afoul of the prohibition on foreign participation in US elections, provided no foreign nationals participate in the decision making process regarding contributions. See Advisory Opinions 1982-34 (Society, 1960-11 (Portland Coment—Association), and 2009-14 (Mercaties-Benz USA/Stenting). Buth de infinitits involvement, in this instance the use of a puriment processing facility for an approved distruspement as directed by a US citizen, would be contributed with past Commission guidamese.

Existing and Future Compliance Mesaures

Consistent with Commission guidance, TransCanada's US subsidiaries utilize an existing set of procedures to ensure that only US citizens or permanent residents are involved in the decision making and approval process for individual political contributions, and that only US operating funds are used for those contributions.

Given the exemination executing from the economic in question, TransCartada's US substitutions have excipted two medifications to current processes. First, approval and reporting of any US political contribution by any US substitutions (experience will be contralized through TransCanada Pipeline US, Ltd. Second, all future UR political contributions will be processed through one of its two US precessing centers. Contributions will continue to be directed by US persons, down on US financial institutions, and using US funds as has been the pattern and practice for contributions to date. This approach will further facilitate of the use of processes and procedures that have already been vetted and approved by the Commission.

Conclusion

The FECA prohibits a foreign national from directly or indirectly making a contribution or donation of money in connection with a federal, state, or local election. Foreign nationals shall not direct, dictate, control, or directly or indirectly participate in the decision making process of any person, such as a corporation, with regard to such person's federal or non-federal election-related activities. Contrary to the assertions raised in the two complaints, no impermissible foreign national contributions occurred in these matters. Moreover, given the return of the contributions by recipient committees on its own initiative, and the commitment by TransCanada to implement additional steps to avoid future mismaterstantings with respect to the political activities of its US submidiance, further action in these neathers is not warranted.

Response in MUR 6401 and MUR 6432 December 7, 2010 Page 5

Respondents, through counsel, respectfully request that the Commission find no reason to believe that a vialation of FECA occurred in this sauther, and dismins the lastant complaint.

Sincerely,

HE.

SNR Denton US LLP

By:

Mike McNamara Michael E. Zolandz

Counsel for TransCanada Keystone Pipeline GP, LLC

1044294936

Enclosure

NEBRASKA **ACCOUNTABILITY AND DISCLOSURE COMMISSION** 11th Floor, State Capitol P.O. Bax 95086 Lincoln, NE 68509 (402) 471-2522

"BEFORE COMPLETING THIS FORM READ THE **INSTRUCTIONS ON PAGE 3**

REPORT OF POLITICAL CONTRIBUTIONS OF A CORPORATION, UNION THER ASSOCIATION NADC FORM B-7

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Any corporation (thicluding a non-profit of professional corporation), tappy organization, or industry, trade, or professional association, doing business in this state which makes a contribution or expenditure or provides personal services of more than \$250 as determined by fair market value for the purposes of influencing or attempting to influence the action of the voters icr.or against the nomination or election of one or grove candidates or the qualification, passage or defeat of one or more ballot quaditions must file this form.

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NEBRASKA **ACCOUNTABILITY AND** DISCLOSURE COMMISSION 11th Floer, State Capitol P.O. Box 95086 Lincoln, NE 68509 (402) 471-2522

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REPORT OF POLITICAL CONTRIBUTIONS OF A PORATION, UNION HER ASSOCIATION IADO FORM B-7

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TransCanada Keysione, LP 13710 FNB Parkway #818 Omaha, NE 68154

Beth Jensen Director, Government Relations beth_jensen@transcapeda.com 402-492-3400

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November 30, 2010

BY FedEx

Enclosures

Nebraska Accountability and Disclosure Commission 11th Floor, State Capital Post Office Box 95986 Lincoln, Nebraska 68508 (402) 471-2522

Re: Amended NADC Form B-7

To Whom It May Concern:

On behalf of TransCanada Keystone, LP, we are amending two previously-filed Nebraska Accountability and Disclosure Commission Reports of Political Contributions of a Corporation, Union or Other Association (NADC Form B-7). The amendment to both NADC Form B-7s clarify the name of the corporation. Specifically, "TomsCanada Corporation" should be replaced with "TransCanada Keystone, LP" of both NADC Form B-7s.

Enclosed with this letter are the two original NADC Form B-7s and the appropriate amended form. Each amended NADC Form B-7 is marked with a large red arrow pointing to the one change outlined above.

Should you have any questions about the enclosed amended forms, please let me know.

...

Sincerely,

Reth lenden

21136

Response to MUR 6401 and MUR 6432 Exhibit E -1

NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

11th Floor, State Capitol P.O. Box 95086 Lincoln, NE 68509 (402) 471-2522

BEFORE COMPLETING THIS FORM READ THE INSTRUCTIONS ON PAGE 3

REPORT OF POLITICAL CONTRIBUTIONS OF A CORPORATION, UNION OR OTHER ASSOCIATION NADC FORM B-7

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- Any corporation (including a non-profit or professional corporation), labor organization, or industry, trade, or professional association, doing business in this state which makes a contribution-or-expenditure or provides personal services of more than \$250 as determined by fair morket value for the purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage or detest of one or more ballot questions must file this form.
- File with the Nebraska Accountability and Disclosure Commission within 10 days after the end of the calendar month in which any reportable contribution or expenditure is made or personal services provided.
- This report is filed on time if it is postmerked or received on or before the due date. Late filling fees are \$25 per day, not to exceed \$750.

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NEBRASKA ACCOUNTABILITY AND_ DISCLOSURE COMMISSION 11th Floor, State Capitol P.O. Box 95086 Lincoln, NE 68509 (402) 471-2522

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REPORT OF POLITICAL CONTRIBUTIONS OF A CORPORATION, UNION OR OTHER ASSOCIATION NADC FORM B-7

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	against the nomination or election of one or more candidates or the qualification, passage or defeat of one or more ballot
	questions must file this form.

File with the Nebraska Accountability and Disclosure Commission within 10 days after the end of the calendar month in which any reportable contribution or expenditure is made or personal services provided.

This report is filed on time if it is postmarked or received on or before the due date. Late filling fees are \$25 per day, not to exceed \$750.

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VERIFICATION STATEMENT					
i, Bath Jensen, state that I am duly authorized to file this report,					
(Name of Individual Signing) That I have used all reasonable diligence in its preparation and that to the best of my knowledge it is true and complete.					
· Has treated and total control and and an in the properties of the best of the knowledge it is the and complete.					
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11/30/2010 Set Leusen Director Bovernment					
11/30/2010 Bert Jewson Divertor Bovernment (DATE) (Signature and Tale) appears					
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